

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
Civil Action No. 08-2924

In Regard to the Matter of:
Bayside State Prison
Litigation

JASON PHILLIPS,

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

* * * *

MONDAY JUNE 16, 2008

* * * *

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

MASTROIANNI & FORMAROLI, INC.
Certified Court Reporting & Videoconferencing
251 South White Horse Pike
Audubon, New Jersey 08106
856-546-1100

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Transcript of proceedings in the above
matter taken by Theresa O. Mastroianni, Certified
Court Reporter, license number 30X100085700, and
Notary Public of the State of New Jersey at the
United States District Court House, One Gerry Plaza,
Camden, New Jersey, 08102, commencing at 3:23 PM.

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A P P E A R A N C E S:

LOUGHRY & LINDSAY, ESQUIRES

BY: LAWRENCE W. LINDSAY, ESQUIRE

330 MARKET STREET

CAMDEN, NEW JERSEY 08102

856-968-9201

ATTORNEYS FOR THE PLAINTIFFS

ROSELLI & GRIEGEL, PC

BY: JAMES LAZZARO, ESQUIRE

- and -

BY: KENNETH W. LOZIER, ESQUIRE

1337 STATE HIGHWAY 33

HAMILTON SQUARE, NEW JERSEY 08690

609-586-2257

ATTORNEYS FOR THE DEFENDANTS

1 JUDGE BISSELL: The Special Master
2 reopens proceedings in connection with the complaint
3 of Jason Phillips, Civil Number 08-2924.

4 This opinion/report is being issued
5 pursuant to the directives of the Order of Reference
6 to a Special Master and the Special Master's
7 Agreement and the guiding principles of law which
8 underlie this decision to be applied to the facts
9 upon which it is based as set forth in the jury
10 instructions in the Walker and Mejias jury charges to
11 the extent applicable to the allegations of Mr.
12 Phillips' case.

13 Jason Phillips was housed in E Unit on
14 or about July 31st, 1997 at the beginning of the
15 lockdown. As he explored in some depth in pages 13
16 through 16 of yesterday's transcript, he had a change
17 in status pending. In fact, proceedings were
18 scheduled for that week which would have given him a
19 change in status and appeared at least to go to the
20 farm unit. Needless to say, that was an important
21 event for him as it was to any prisoner to be allowed
22 to go into that full minimum setting.

23 E Unit was evacuated for inspection on
24 or about that date. He allegedly was beaten in his
25 cell area before being taken to the gym. I do not

1 find that that evidence is credible, at least to the
2 extent that he would testify to it. It doesn't
3 figure, particularly in connection with a significant
4 extraction such as this and a number of prisoners
5 from this unit, some a hundred 25 of them. Other
6 than the fact that he was pressed up against the wall
7 to control him and that that may have led to some
8 discomfort or even a scratch, I don't find any
9 actionable conduct inflicted upon him upon the
10 extraction from his cell.

11 He arrived at the gym, was seated first
12 in the back of the gym near the Rottweiler, as I
13 recall it, but without any physical incidents at that
14 time. However, shortly thereafter he was then taken
15 to be seated in the inmate population on the floor of
16 the gym in a certain position with directions to be
17 quiet and not to move.

18 I find that on one, two and eventually
19 three occasions he raised his hand for the purpose of
20 drawing the attention of a SOG officer to indicate
21 that he had to go to the bathroom. This represents a
22 bit of a dilemma in connection with the
23 administration of the situation involved there in the
24 gym.

25 On the one hand, it certainly is a

1 hardship for an individual prisoner to be refused
2 such an opportunity and accordingly have to urinate
3 in his clothing, a point which Mr. Phillips made
4 here.

5 On the other hand, one can well
6 understand that having to administer and control 125
7 inmates in that setting, perhaps for several hours
8 before they can be returned to their unit, presents a
9 problem for the SOG officers. Because all of a
10 sudden one bathroom call could become a hundred and
11 that's really not easily manageable.

12 In any event, the SOG officers, it
13 seemed, got a bit upset with Mr. Phillips and decided
14 that they were going to discourage this type of
15 conduct, these types of inquiries. To put it mildly,
16 they didn't want hands going up all over the gym so
17 they took him to the back of the gym and at that
18 point did, indeed, strike him in order to enforce
19 their message that bathroom breaks or individual
20 conversations or efforts here, there and everywhere
21 to gain the attention of the SOG officers were not
22 going to be tolerated.

23 It may well have included a verbal
24 exchange of some sort between him and the officers
25 including Officer Maldonado who apparently was the

1 one most upset and most inconvenienced by Mr.
2 Phillips' conduct on the gym floor.

3 In the course of his being struck in
4 the back of the gym at that point, because he was
5 handcuffed on his knees and not in a position really
6 to resist pressures exerted against him, he was
7 indeed pushed into Mr. Maldonado, in an endeavor to
8 break his fall with his elbow, hit Maldonado in the
9 leg with his elbow generating for Mr. Maldonado an
10 opportunity of which he took full advantage to charge
11 him with assault.

12 Sergeant Frontado, frankly, I find
13 didn't really observe much of what was going on at
14 all. Perhaps as the person in charge, he wouldn't
15 necessarily be focusing on one inmate. But he backed
16 up Maldonado as did the other officer in question and
17 we therefore have the reports 332, 333 and 334 which
18 support a different story that I find not to be
19 credible.

20 The fact that Mr. Phillips, eligible
21 for a change of status, albeit one which would be
22 delayed as a result of his discussions with Mr.
23 Ellis, would consciously undertake disruptive
24 conduct, including intentionally throwing an elbow at
25 the chest of a corrections officer, is not credible.

1 And the corrections officers decided that here was a
2 man who wasn't one hundred fifty percent compliant
3 albeit for circumstances not really within Mr.
4 Phillips' control, he had to go to the bathroom, and
5 that this was going to lead to a disciplinary charge.
6 The charge was in the process of being drawn up, he
7 was taken to B Unit for detention at that time before
8 being brought to court line.

9 He talks of added assaults upon his
10 arrival in B Unit. I do not find those have been
11 adequately substantiated, particularly in light of
12 the fact that I believe the evidence that he was
13 handed off to housing officers in B Unit rather than
14 escorted all the way to his cell by SOG.

15 However, when later taken to court
16 line, I certainly do find it credible that the
17 escorting officers, learning of his plea of not
18 guilty and his decision to contest the charge against
19 him coerced him into not doing so. They were in
20 complete control and, frankly, threatened him with a
21 lot more trouble than he would want to deal with if
22 he persisted in a plea of not guilty. Because, of
23 course, the SOGs did not want to risk a finding by
24 the hearing officer that the charges were false or
25 unsubstantiated.

1 Mr. Phillips, obviously knowing what
2 was in store for him on contesting the charge and
3 perhaps also without any true sanguine belief that he
4 could beat it, agreed to plead guilty.

5 Of course, the result of that was that
6 his opportunity for a change of status evaporated and
7 he received a considerable amount of ad-seg and loss
8 of credit time in connection with his eventual
9 release.

10 I find this conduct on behalf of the
11 SOG officers, their conduct in the gymnasium, their
12 coercive conduct on the way to taking him to court
13 line and its ultimate results constitutes the use of
14 excessive force and a violation of Mr. Phillips'
15 rights to be free from cruel and unusual punishment
16 also as fully defined in the jury instructions which
17 we've incorporated by reference.

18 I find that Mr. Phillips did not
19 sustain any serious, permanent injuries as a result
20 of these events. His discussion and attribution of
21 the aggravation of an ankle condition I did not find
22 sufficiently substantiated by his lay testimony
23 alone. There was, however, an additional assault not
24 of a considerable nature, which at least can be
25 considered cumulatively in this matter because upon

1 his return from court line he was assaulted and then
2 further subjected to the indignity of having orange
3 juice poured over his head and labeled OJ, as I
4 recall.

5 There was, indeed, excessive,
6 unnecessary and sadistic force imposed upon Mr.
7 Phillips under the instances which I found here
8 within the contemplation of those legal principles.
9 However, once again, in light of the fact that the
10 physical assaults on Mr. Phillips were not prolonged
11 or repeated, while actionable for recovery of
12 compensatory damages, I do not find that they rise to
13 the level of being so egregious as to support a claim
14 for punitive damages.

15 Finally, although not every item of
16 evidence has been discussed in this opinion/report,
17 all evidence presented to the Special Master was
18 reviewed and considered. I find, therefore, that the
19 injury inflicted upon Mr. Phillips as more
20 specifically described here was acute initially, had
21 some duration but not of a substantial permanent
22 nature and didn't result in any significant,
23 continuing pain or restriction upon his activities.

24 However, they did inflict some real
25 impact upon his custody status leading him to a

1 lengthy period of ad-seg at Northern State Prison, a
2 very different set of circumstances than those which
3 would otherwise have ensued in his conversion of
4 status to full minimum. I think this can be taken
5 into account in connection with a measure of
6 compensatory damages.

7 Furthermore, as I've said, the
8 humiliation of the orange juice incident,
9 particularly when it's accompanied by physical
10 injuries that are more than de minimis, may also be
11 considered in the measurement of damages, in this
12 case of a more emotional variety.

13 Accordingly, I recommend in this report
14 that the district court enter an award of
15 compensatory damages in the amount of eight thousand
16 dollars in favor of Mr. Phillips.

17 Let's go off the record.

18 (Hearing concluded)

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1 C E R T I F I C A T E

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3 I, Theresa O. Mastroianni, a Notary Public and
4 Certified Shorthand Reporter of the State of New
5 Jersey, do hereby certify that the foregoing is a
6 true and accurate transcript of the testimony as
7 taken stenographically by and before me at the time,
8 place, and on the date hereinbefore set forth.

9 I DO FURTHER CERTIFY that I am neither a
10 relative nor employee nor attorney nor counsel of any
11 of the parties to this action, and that I am neither
12 a relative nor employee of such attorney or counsel,
13 and that I am not financially interested in the
14 action.

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T. O. Mastroianni

Theresa O. Mastroianni, C.S.R.

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Notary Public, State of New Jersey

My Commission Expires May 5, 2010

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Certificate No. X10857

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Date: June 17, 2008

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